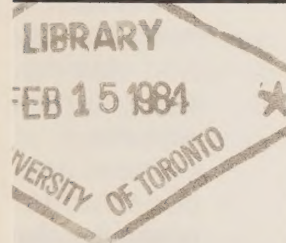


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# ANADA'S FISH HABITAT LAW

IF YOU ARE PLANNING WORK NEAR WATER,  
FIRST CHECK THE FISHERIES ACT FIRST — AND AVOID  
PROBLEMS LATER



buying property or  
work that might have  
an impact on coastal waters,  
streams, river beds,  
or marine offshore  
resources, first inquire how  
fisheries habitat protec-  
tion might affect their plans.

For fish and those nat-  
ural systems that  
are provided for under  
the Fisheries Act. This Act  
of the Confederation and  
aimed to ensure the  
protection of this valu-  
able resource. Responsibility for  
the Act lies with the  
Fisheries and Oceans  
Department. Their re-  
sponsibility is not to Parliament  
but to the clients and  
citizens, the people of



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and this leaflet will describe the  
nature of the protection which the  
*Fisheries Act* provides.

The term "fish habitat" covers a  
great variety of environments  
where fish live. The *Fisheries Act*  
defines them as:

"Spawning grounds and nur-  
series, rearing, food supply and  
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depend, directly or indirectly, in

order to carry out their life pro-  
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In other words, the habitats in-  
clude not only the water in rivers,  
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also the total surroundings in  
which plants and other life forms  
interact to make fish life possible.

## MONEY IN THE BANK

Fish are an important part of  
Canada's renewable resource  
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One problem up to now has  
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## A "FISH"

way of conserving  
resources is through direct









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and Oceans

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# CANADA'S FISH HABITAT LAW

IF YOU ARE PLANNING WORK NEAR WATER,  
BETTER CHECK THE FISHERIES ACT FIRST — AND AVOID  
PROBLEMS LATER



**A**n anyone buying property or planning work that might have some impact on coastal waters, salt marshes, streams, river beds, lake shores or marine offshore areas should first inquire how Canada's fisheries habitat protection laws could affect their plans.

Protection of fish and those natural environmental systems that support fish is provided for under the federal *Fisheries Act*. This *Act* dates back to Confederation and is a strong tool to ensure the sound management of this valuable resource. Responsibility for administering the *Act* lies with the Minister of Fisheries and Oceans and his Department. Their responsibility is not to Parliament alone, but also to the clients and users of the fishery, the people of Canada.

## WHAT IS A "FISH HABITAT?"

While one way of conserving fish for the future is through direct



management of the harvest, it is also critical that the natural systems that produce fish be protected from harm. These systems are referred to as "fish habitat" and this leaflet will describe the nature of the protection which the *Fisheries Act* provides.

The term "fish habitat" covers a great variety of environments where fish live. The *Fisheries Act* defines them as:

"Spawning grounds and nursery, rearing, food supply and migration areas on which fish depend, directly or indirectly, in

order to carry out their life processes." (Section 31 (5))

In other words, the habitats include not only the water in rivers, lakes, streams and oceans, but also the total surroundings in which plants and other life forms interact to make fish life possible.

## MONEY IN THE BANK

Fish are an important part of Canada's renewable resource base. Commercial and recreational fisheries contribute more than \$3 billion annually to the national economy in 1982 dollars. Other less tangible social benefits, such as support for traditional lifestyles in small, remote communities, also flow from the fishery base. For these reasons, it is important that fish and their supporting habitat be protected.

One problem up to now has been that most people do not automatically recognize the value of fish habitats. It is easy to enlist

Canada





public support to protect a majestic river valley or a favorite swimming beach. An ordinary marsh or a smelly tidal flat is far more likely to be dredged, paved over or otherwise destroyed as a fish habitat without the public realizing that something of significant economic and social value has been lost. And yet fish habitats are vital assets to Canadians — in fact, money in the bank. They are essential to the survival of fish and represent the bedrock of our commercial and recreational fisheries. They are as essential to those industries as topsoil is to farming.

Another problem is that a fish habitat can be wiped out without much visible evidence of the destruction. For example, the eggs of salmon and trout cannot survive just anywhere — they must be laid in streams where there is a bed of gravel. Take away the gravel and the stream will flow as before on the surface, but it will not be a spawning stream. Some

fish, and the food organisms on which they depend, need fast-running water to survive, and if the water is dammed they may be lost. Landfilling and paving over marshes can cut off the flow of nutrients and food which fish need for growth.

## WHAT HARMS HABITATS?

Fish habitats can be damaged in ways both obvious and obscure and by changes big and small. A multi-million dollar hydro project can take its toll, but so can a poorly installed culvert on a farm lane that blocks fish migration by crossing a salmon or trout stream.

Among the most common threats posed to fish habitats are those associated with:

- removal of sand or gravel from beaches, riverbanks or streambeds
- industrial and municipal

waste discharges

- stream diversion
- dredging or filling of tidal flats or marshland
- dredging for deep-sea port construction
- accidents during the development of offshore oil and gas reserves
- seabed mining
- introduction of silt, contaminants and other pollutants
- land clearing to provide for agricultural or urban development
- improper use of pesticides
- construction of electric power installations
- dyking and stream channelization
- building of causeways, wharves, marinas and reservoirs
- logging and log storage
- pipelines, transmission lines, road and rail construction.

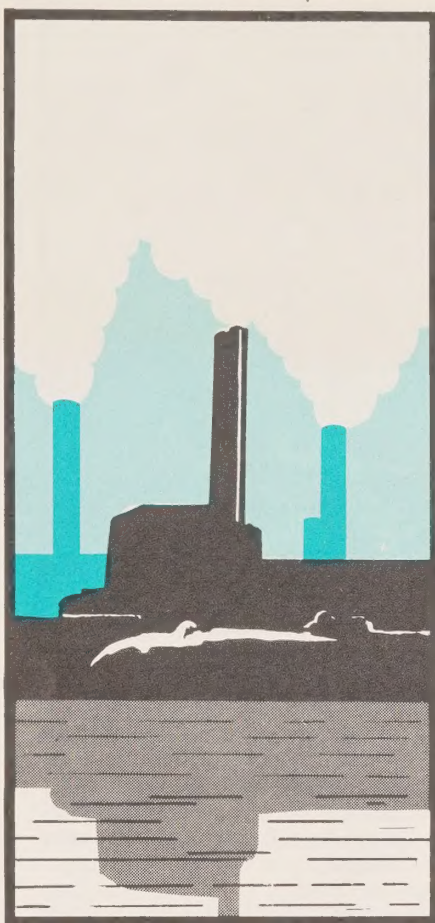
These projects and many others may do irreparable damage and can cause social and economic losses to fisheries if not carefully planned. So may any project that upsets the physical, chemical and biological balance of fish habitats.

## CHECK BEFORE STARTING

The existence of federal laws relating to the aquatic environment does not mean that fisheries management personnel will be blocking every project affecting fish habitats. It does mean, however, that the project's impact on fisheries will have to be considered before the activity begins.



## air and water pollution



the eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine animals.

### **Fish Habitat:**

**Section 31(5):** For the purposes of this section and sections 33, 33.1 and 33.2, "fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

### **Deleterious Substance:**

**Section 33(11):** For the purposes of this section and sections 33.1 and 33.2, "deleterious substance" means

- a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

- b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water;

and without limiting the generality of the foregoing includes

- c) any substance or class of substances prescribed pursuant to paragraph 33(12)(a),
- d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph 33(12)(b), and
- e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph 33(12)(c);

### **Deposit:**

**Section 33(11):** "Deposit" means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing;

### **Water Frequented by Fish:**

**Section 33(11):** "Water frequented by fish" means Canadian fisheries waters.

### **Further Explanation:**

**Section 33.4(3):** a) a "deposit" as defined in subsection 33(11) takes place whether or not any act or omission resulting in the deposit is intentional; and

- b) no water is "water frequented by fish" as defined in subsection 33(11) where proof is made that at all times material to the proceedings the water is not, has not been and is not likely to be frequented in fact by fish.

The Minister responsible for the *Fisheries Act* can require a developer to submit complete information, including plans, specifications, studies and samples, for scrutiny by fisheries management authorities. If these show possible dangers to fish habitat, the Minister can order that the plans be changed.

Failure to comply with the law may result in fines of up to \$50,000 or up to two years imprisonment on conviction after indictment.

In most cases, early consultation between the developer and the government officials responsible for fish habitat management will make it possible to devise a plan that meets the needs of all concerned. Fish habitat experts can provide advice and assistance that may well improve the project for the developer, even while enhancing the fisheries resource base.

The following are extracts from the *Fisheries Act* and relate only to the protection of fish habitat. The extracts have been slightly modified in some cases and follow a sequence designed for easy reference to the habitat provisions of the *Act*.

## DEFINITIONS

### **Canadian Fisheries Waters:**

**Section 2:** In this *Act*, "Canadian fisheries waters" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada.

### **Fish:**

**Section 2:** "Fish" includes shellfish, crustaceans, marine animals and



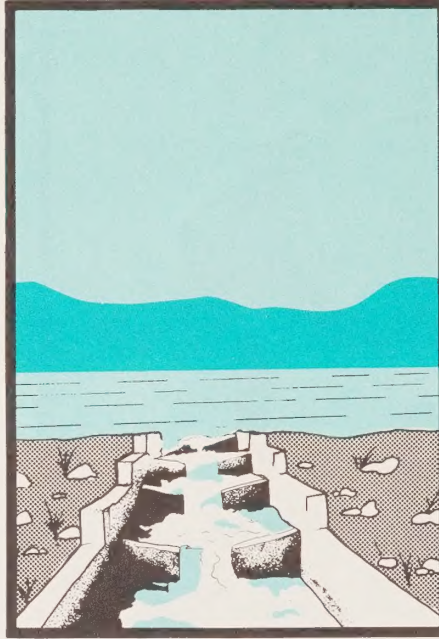
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## THE NEED FOR SAFE FISH PASSAGE

**Section 20(1)** Every slide, dam or other obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fishpass should exist, shall be provided by the owner or occupier with a durable and efficient fishway, or canal around the slide, dam or other obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister satisfactorily permit the free passage of fish through the same; where it is determined by the Minister in any case that the provision of an efficient fishway or canal around the slide, dam or other obstruction is not feasible, or that the spawning areas above such slide, dam or other obstruction are destroyed, the Minister may require the owner or occupier of such slide, dam or other obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

**Section 20(2):** The place, form and capacity of the fishway or canal to be constructed must be approved by the Minister before construction thereof is begun; and immediately after the fishway is completed and in operation the owner or occupier of any dam or obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions, if such are found to be needed.

**Section 20(3):** The owner or occupier of every fishway or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which such fishway or



canal is placed to pass through the same during such times as are specified by any fishery officer; and, where leaks in a dam cause a fishway therein to be inefficient, the Minister may require the owner or occupier of such dam to prevent such leaks therein.

**Section 20(4):** The Minister may authorize the payment of one-half of the expense incurred by such owner or occupier in constructing and maintaining any fishway or canal; and after a fishway or canal that has been duly approved by the Minister has been built at the cost of the owner or occupier of any slide, dam or other obstruction, or after such owner or occupier has paid one-half the cost thereof and such fishway or canal thereafter proves to be ineffective, except as provided in subsection (2), the total cost of any change in such fishway or canal or any new fishway or canal required to enable the fish to pass by such slide, dam or other obstruction, shall be paid by Her Majesty.

**Section 20(5):** The Minister, in order to procure the construction of any fishway or canal, pending proceedings against any owner or occupier for the penalty imposed by this Act, may make and complete the same forthwith, and may authorize any person to enter upon the premises with the necessary workmen, means and

materials for such purpose and may recover from the owner or occupier the whole expense so incurred by action in the name of Her Majesty.

**Section 20(6):** Where unused slides, dams, obstructions, or anything detrimental to fish exist, and the owner or occupier thereof does not after notice given by the Minister remove the same, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to indemnify the said owner or occupier, cause such slide, dam, obstruction, or thing detrimental to fish life to be removed or destroyed and in cases where notice has been given to the owner or occupier, may recover from said owner or occupier the expense of so removing or destroying the same.

## MINIMUM FLOW REQUIREMENTS

**Section 20(7):** The Minister may require the owner or occupier of any slide, dam or other obstruction to install and maintain such fish stops or diverters, both above and below any dam or obstruction as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

**Section 20(8):** At every slide, dam or other obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spillway or crest, with connecting sluices into the river below to permit the safe and unimpeded descent of fish.

**Section 20(9):** The owner or occupier of any slide, dam or other obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish, during the period of construction thereof.



**Section 20(10):** The owner or occupier of any slide, dam or other obstruction shall permit to escape into the river bed below the said slide, dam or other obstruction, such quantity of water at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

## ASSESSMENTS TO OWNERS OF OBSTRUCTIONS

**Section 53(1):** Where the Minister determines that the provision, which he deems necessary for the public interest, of an efficient fishway or canal around any slide, dam or other obstruction is not feasible or that the spawning areas above such slide, dam or other obstruction are destroyed by reason of any such obstruction, the owner or occupier of any such slide, dam or other obstruction shall from time to time pay to the Receiver General such lump sum or annual sum of money as may be assessed against him by the Minister for the purpose of constructing, operating and maintaining such complete hatchery establishment as will, in the opinion of the Minister, meet the requirements for maintaining the annual return of migratory fish.

### Penalty:

**Section 52:** Every owner or occupier of a slide, dam or other obstruction across or in any stream,

- a) where the Minister determines it to be necessary for the public interest that a canal around a dam or a fish-pass therein should exist, who, after three days' notice in writing, neglects or refuses to provide a durable and efficient fishway or canal, or who neglects or refuses to maintain the same in a good and effective condition in such place and of such form and capacity as will admit of the passage of fish;
- b) where the Minister requires the installation and maintenance of such



fish stops or diverters as will in his opinion be adequate to prevent the destruction of fish and to assist in providing for their ascent, who after three days' notice in writing, neglects or refuses to provide the same; or

- c) where the Minister determines it to be necessary to provide a sufficient flow of water over the spillway or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish, who after three days' notice in writing, neglects or refuses to provide such, is liable to a penalty of not less than four dollars and not more than twenty dollars for each day or part of a day during which such notice is not complied with and is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each day or part of a day during which such notice is not complied with.

## PROTECTION OF FISH IN OR NEAR FISHWAYS

**Section 25:** No one shall injure or obstruct any fishway or canal built, constructed or used to enable fish to pass over or around any slide, dam or other obstruction or do anything to stop, impede or hinder fish from entering or passing the same or to stop, impede or hinder fish from surmounting any obstacle or leap, nor shall any one fish in any manner within twenty-five yards downstream from the lower entrance to any fishway or canal, obstacle or leap.

**Section 27:** No one shall erect, use or maintain in any of the waters of Canada whether subject to any exclusive right of fishery or not, any net, weir, or other device that unduly obstructs the passage of fish; and the Minister or any fishery officer may order the removal of or remove any net, weir, or other device that, in the opinion of the Minister or any fishery officer, unduly obstructs the passage of fish.

## DESTRUCTION OF FISH

**Section 30:** No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

## DESTRUCTION OF FISH BY EXPLOSIVES

**Section 26:** No one shall hunt or kill fish or marine animals of any kind, other than porpoises, whales, walruses, sea lions and hair seals, by means of rockets, explosive materials, or explosive projectiles or shells.

### Penalty:

**Section 54:** Every person who hunts or kills fish or marine animals of any kind, other than porpoises, whales, walruses, sea lions and hair seals, by means of rockets, explosive materials or explosive projectiles or shells, is liable to a penalty of not less than one hundred dollars and costs, or to imprisonment for not less than



three months, or to both, and not more than five hundred dollars and costs or to imprisonment for six months or to both.

## FISH GUARDS AND SCREENS

**Section 28(1):** Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes, shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting, so fixed as to prevent the passage of fish from any Canadian fisheries waters into such water intake, ditch, channel or canal.

**Section 28(2):** The fish guard, screen, covering or netting referred to in subsection (1) shall have meshes or holes of such dimensions as the Minister may prescribe, and shall be built and maintained by the owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.

**Section 28(3):** The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair, and during the time such renewal or repair is being effected the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.

### Penalty:

**Section 55:** Every owner or occupier of a water intake, ditch, channel or canal in Canada, constructed or adapted for conducting water from any Canadian fisheries



waters for irrigating, manufacturing, power generation, domestic or other purposes, who

- a) neglects or refuses to provide and maintain in a good and sufficient state of repair at its entrance or intake a fish guard, screen covering or netting with meshes of such dimensions as the Minister may prescribe, approved by the Minister or such officer as the Minister from time to time appoints to examine it, and so fixed as to prevent the passage of fish from any Canadian fisheries waters into such water intake, ditch, channel or canal,
- b) permits the removal of the fish guard, screen, covering or netting referred to in paragraph (a) except for renewal or repair, or
- c) during the time the renewal or repair referred to in paragraph (b) is being effected, neglects or refuses to close the sluice or gate at the intake or entrance of such water intake, ditch, channel or canal, so as to prevent the passage of fish into such water intake, ditch, channel or canal,

is, after three days' notice in writing from the Minister or a fishery officer, guilty of an offence and liable on summary conviction to a fine not exceed-

ing five thousand dollars for each day or part of a day during which such offence continues.

## DESTRUCTION OF FISH HABITAT

**Section 31(1):** No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

**Section 31(2):** No person contravenes subsection 31(1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

### Penalty:

**Section 31(3):** Every person who contravenes subsection (1) is guilty of an offence and liable

- a) on summary conviction, to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence; or
- b) on conviction or indictment, to imprisonment for a term not exceeding two years.

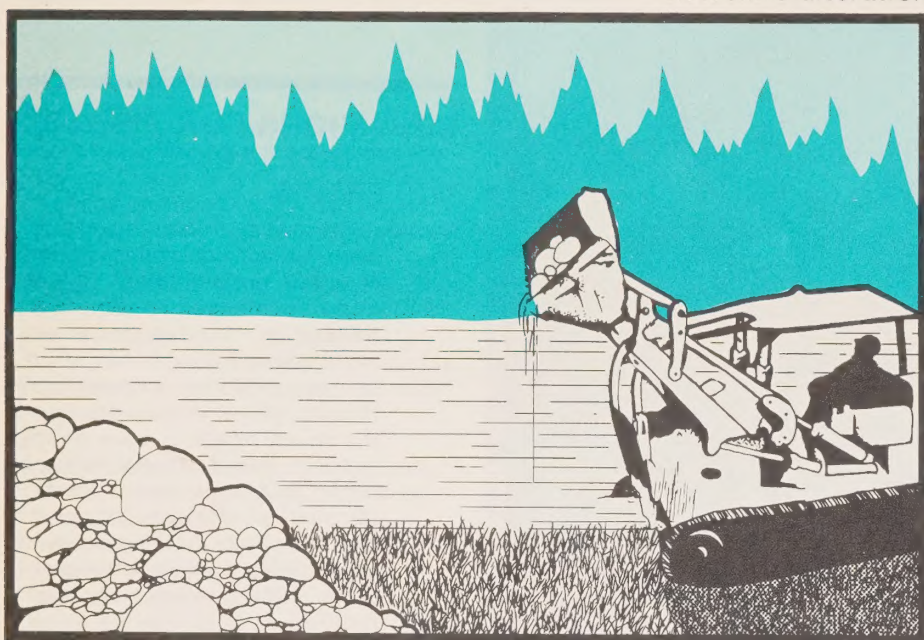
## POLLUTION OF FISH HABITAT

**Section 33(2):** Subject to subsection 33(4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.

**Section 33(4):** No person contravenes subsection 33(2) by depositing or permitting the deposit in any water or place

- a) of waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or





- b) of a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection (13).

**Penalty:**

**Section 33(5):** Any person who contravenes any provision of

- b) subsection 33(2) is guilty of an offence and liable on summary conviction to a fine not exceeding fifty thousand dollars for a first offence, and not exceeding one hundred thousand dollars for each subsequent offence.

## OBLIGATIONS OF PROPONENTS

**Section 33.1(1):** Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in,

- a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
- b) the alteration, disruption or destruction of fish habitat,

shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph 33.1 (3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

- c) whether there is or is likely to be a deposit of a deleterious substance by reason of such work or undertaking that constitutes or would constitute an offence under section 33 and what measures, if any, would prevent such a deposit or mitigate the effects thereof; or
- d) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under section 31 and what measures, if any, would prevent such a result or mitigate the effects thereof.

## POWERS OF THE MINISTER

**Section 33.1(2):** If, after reviewing any material or information provided under subsection 33.1(1) and affording the persons who provided it a reasonable opportunity to make representations, the Minister or a person designated by the Minister is of the opinion

that an offence under section 31 or 33 is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph 33.1(3)(b), or, if there are no such regulations in force, with the approval of the Governor in Council,

- a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances, or
- b) restrict the operation of the work or undertaking,

and, with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

## OFFER TO CONSULT AND INTERIM ORDERS

**Section 33.1(4):** Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection 33.1(2), he shall offer to consult with

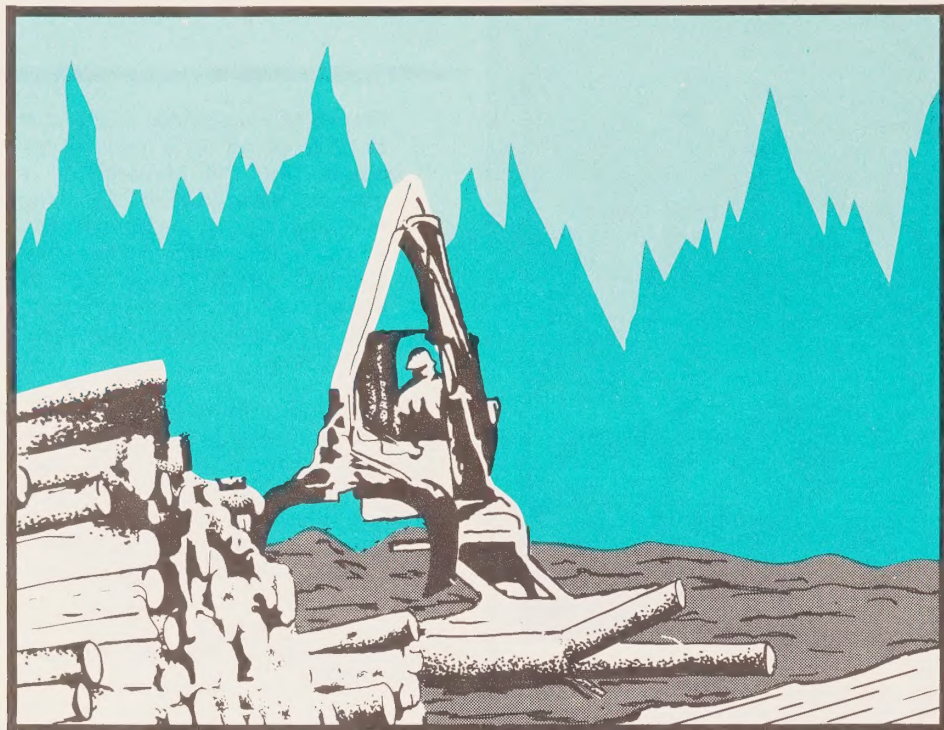
- a) the governments of any provinces that he considers to be interested in any such proposed order, and
- b) any departments or agencies of the Government of Canada that he considers appropriate,

but nothing in this subsection prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection 33.1(2) without such consultation where he considers that immediate action is necessary.

## DUTY TO REPORT

**Section 33.2(4):** Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any





condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time

a) owns the deleterious substance or has the charge, management or control thereof, or

b) causes or contributes to the causation of the deposit or danger thereof,

shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.

#### Penalties:

**Section 33.4(1):** Every person who

a) fails to provide the Minister with any material or information requested pursuant to subsection 33.1(1) within a reasonable time after the request is made,

b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 33.1(1),

c) fails to make a report that he is required to make under subsection 33.2(4),

d) carries on any work or undertaking described in subsection 33.1(1)

(i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 33.1(1),

(ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 33.1(2)(a), or

(iii) contrary to any order made by the Minister under subsection 33.1(2),

is guilty of an offence and

h) in any case referred to in paragraph (a), (b) or (c) is liable on summary conviction to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence, or

i) in any case referred to in paragraph (d) is liable on summary conviction to a fine not exceeding twenty-five thousand dollars for a first offence, and not exceeding fifty thousand dollars for each subsequent offence.

## PROVISIONS FOR DISCARD OF MISCELLANEOUS MATERIALS

**Section 33(1):** No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water or upon the beach between high and low water mark, remains or offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus; such remains or offal may be buried ashore, above high water mark.

#### Penalties:

**Section 33(5):** Any person who contravenes any provision of

a) subsection 33(1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence.

## DESIGNATION OF GURRY GROUNDS

**Section 43:** Gurry grounds may be designated or defined by any fishery officer. (*Gurry may be defined as the waste parts of fish; for example, the head, tail, fins and entrails.*)

## THE POWER TO MAKE REGULATIONS

**Section 34:** The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

b) respecting the conservation and protection of fish

h) respecting the obstruction and pollution of any waters frequented by fish;

i) respecting the conservation and protection of spawning grounds;



- l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those duties and powers.

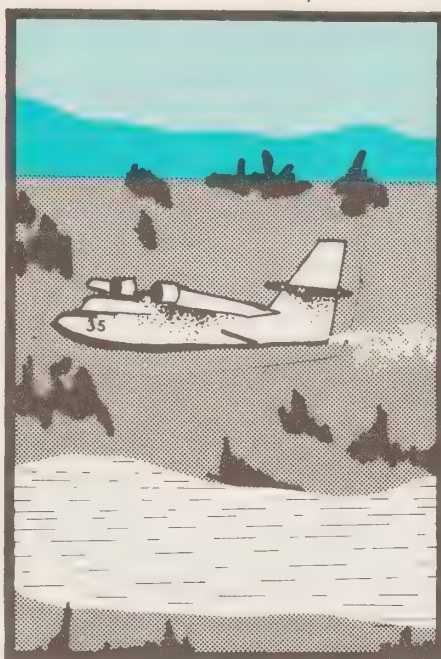
**Section 33(12):** The Governor in Council may make regulations prescribing

- a) substances and classes of substances,
- b) quantities or concentrations of substances and classes of substances in water, and
- c) treatments, processes and changes of water

for the purpose of paragraphs (c) to (e) of the definition "deleterious substance" in subsection 33(11).

**Section 33(13):** The Governor in Council may make regulations for the purpose of paragraph 33(4)(b) prescribing

- a) the deleterious substances or classes thereof authorized to be deposited notwithstanding subsection 33(2);
- b) the waters or places or classes thereof where any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;
- c) the works or undertakings or classes thereof in the course or conduct of which any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;
- d) the quantities or concentrations of any deleterious substances or classes thereof referred to in paragraph (a) that are authorized to be deposited;
- e) the conditions or circumstances under which and the requirements subject to which any deleterious substances or classes thereof referred to in paragraph (a) or any quantities or concentrations of such deleterious substances or classes thereof are authorized to be deposited in any waters or places or classes thereof referred to in paragraph (b) or in the course or conduct of any works



or undertakings or classes referred to in paragraph (c); and

- f) the persons who may authorize the deposit of any deleterious substances or classes thereof in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which such persons may grant such authorization.

**Section 33.1(3):** The Governor in Council may make regulations

- a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection 33.1(1); and
- b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection 33.1(2) and the terms of such orders.

## PROTECTION OF FISH SANCTUARIES

**Section 44:** The Minister may authorize any river or other water to be set apart for the natural or artificial propagation of fish.

### Penalty:

**Section 56:** Every person who wilfully destroys or injures any place set apart under the authority of the Minister for the propagation of fish, or who fishes therein without written permission from

a fishery officer, or uses therein any fishing light or other implement for fishing during the period for which such waters are so set apart, is liable to a penalty of not less than fifty dollars and costs and not more than two hundred dollars and costs, and, in default of payment, to imprisonment for a term not less than six months, and not more than twelve months or to both fine and imprisonment.

## THE POWERS OF THE FISHERIES OFFICERS

**Section 36:** Any fishery officer, fishery guardian or peace officer may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence against this Act or any regulation, or whom he finds committing or preparing to commit an offence against this Act or any regulation.

**Section 39:** In the discharge of his duties any fishery officer, fishery guardian or other person or persons accompanying him or authorized to such effect by the fishery officer, may enter upon and pass through or over private property without being liable for trespass.

## SEIZURE OF EQUIPMENT

**Section 58(1):** A fishery officer may seize any fishing vessel, vehicle, fishing gear, implement, appliance, material, container, goods, equipment or fish where the fishery officer on reasonable grounds believes that

- a) the fishing vessel, vehicle, fishing gear, implement, appliance, material, container, goods or equipment has been used in connection with the commission of an offence against this Act or the regulations.

**Section 58(2):** Subject to this section, any vessel, vehicle, article, goods or fish seized pursuant to subsection 58(1) shall be retained in the custody of the fishery officer making the seizure or shall be delivered into the custody of such person as the Minister directs.



**Section 58(5):** Where a person is convicted of an offence under this Act or the regulations, the Minister or the convicting court or judge may, in addition to any punishment imposed, order that

a) any vessel, vehicle, article, goods or fish seized pursuant to subsection (1); or

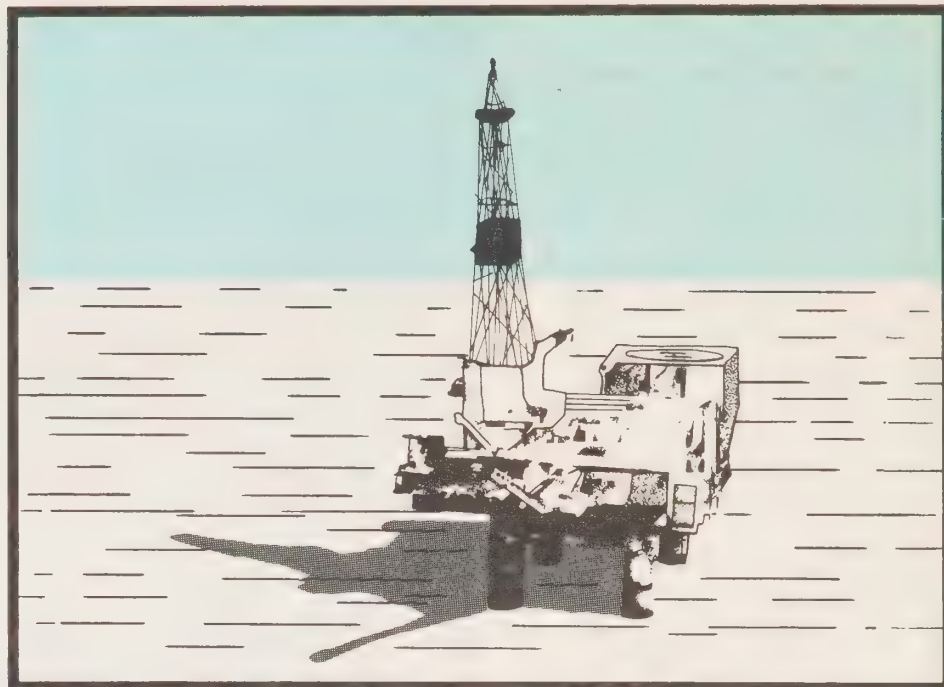
b) the whole or any part of the proceeds of a sale referred to in subsection (3),

be forfeited, and upon such order being made the vessel, vehicle, article, goods, fish or proceeds so ordered to be forfeited, are forfeited to Her Majesty in right of Canada.

**Section 58(6):** Notwithstanding subsection 58(5), where the ownership of any fishing gear, implement, appliance, material, container, goods, equipment or fish seized pursuant to subsection 58(1) cannot, at the time of the seizure, be ascertained by the fishery officer by whom the seizure is made, the fishing gear, implement, appliance, material, container, goods, equipment or fish are upon the seizure thereof forfeited to Her Majesty.

**Section 58(7):** Where any vessel, vehicle, article, goods or fish have been seized under subsection 58(1) and proceedings in respect of the alleged offence have been instituted, the court or judge may, except in the case of any article, goods or fish forfeited under subsection 58(6), order redelivery thereof to the accused upon security by bond, with two sureties, in an amount and form satisfactory to the Minister, being given to Her Majesty or upon security of a cash deposit, in an amount satisfactory to the Minister, being given to Her Majesty.

**Section 58(8):** Any vessel, vehicle, article, goods or fish seized under subsection 58(1) or the proceeds realized from a sale thereof under subsection 58(3), except any article, goods or fish forfeited under subsection 58(6), shall be returned or paid to the



person from whom the vessel, vehicle, article, goods or fish were taken if the Minister decides not to institute a prosecution in respect of the alleged offence, and in any event, shall be returned or paid upon the expiration of three months from the day of the seizure unless before that time proceedings in respect of the alleged offence are instituted.

**Section 58(9):** Except as provided in section 59, any vessel, vehicle, article, goods or fish forfeited under subsection 58(5) or 58(6) shall, after the expiration of thirty days from the date of the forfeiture, be disposed of as the Minister directs.

**Section 58(11):** Where any vessel, vehicle, article, goods or fish have been seized pursuant to subsection 58(1) and proceedings in respect of the offence have been instituted, but the vessel, vehicle, article, goods or fish or any proceeds realized from the sale thereof under subsection 58(3) are not, at or within thirty days after the final conclusion of the proceedings, ordered to be forfeited under subsection 58(5), and have not been forfeited under subsection 58(6), they shall be returned forthwith, or the proceeds shall be paid forthwith, to the person from whom

the vessel, vehicle, article, goods or fish were taken, unless there has been a conviction and a penalty imposed, in which case the vessel, vehicle, article, goods or fish may be detained until the penalty is paid, or the vessel, vehicle, article, goods or fish may be sold under execution in satisfaction of the penalty, or the proceeds realized from a sale of any article, goods or fish pursuant to subsection 58(3) may be applied in payment of the penalty.

## GENERAL PENALTIES

**Section 61(1):** Except as otherwise provided in this Act, every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or both.

**Section 33(7):** Where a person is convicted of an offence under section 31 or section 33, the court may, in addition to any punishment it may impose, order that person to refrain from committing any further such offence or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is



## sport fishing

likely to result in the committing of any further such offence or to take such action specified in the order as, in the opinion of the court, will or is likely to prevent the commission of any further such offence.

**Section 33(9):** Notwithstanding that a prosecution has been instituted in respect of an offence under section 31 or section 33, the Attorney General of Canada may commence and maintain proceedings to enjoin any violation of any provision of section 31 or section 33.

## RECOVERY OF COSTS INCURRED BY THE CROWN

**Section 33(10):** Where there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under this section or a serious and imminent danger thereof by reason of any condition, the persons who at any material time

- a) own the deleterious substance or have the charge, management or control thereof, or
- b) are persons other than those described, in paragraph (a) who cause or contribute to the causation of the deposit or danger thereof,

are, subject to subsection (10.2) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all costs and expenses incurred by Her Majesty in right of Canada or a province, to the extent that such costs and expenses can be reasonably incurred in the circumstances, of and incidental to the taking of any measures to prevent any such deposit or condition or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom, and all such costs and expenses are recoverable by Her Majesty in right of Canada or a province with costs in proceedings



brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

## CIVIL LIABILITIES FOR LOSS OF INCOME BY FISHERMEN

**Section 33(10.1):** Where, as a result of a deposit that is not authorized under section 33(10), a deleterious substance enters water frequented by fish, the persons who at any material time

- a) own the deleterious substance or have the charge, management or control thereof, or
- b) are persons other than those described in paragraph (a) who cause or contribute to the causation of the deposit,

are, subject to subsection 33(10.2) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all loss of income incurred by any licenced commercial fisherman, to the extent that such loss can be

established to have been incurred as a result of the deposit or of a prohibition to fish resulting therefrom, and all such loss is recoverable with costs in proceedings brought or taken therefor in any court of competent jurisdiction.

**Section 33(10.2):** The liability of any person referred to in paragraph 33(10)(a) or (10.1)(a) is absolute and does not depend on proof of fault or negligence but no such person is liable for any costs and expenses pursuant to subsection (10) or loss of income pursuant to subsection 33(10.1) if he establishes that the occurrence giving rise to the liability was wholly caused by

- a) an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- b) an act or omission with intent to cause damage by a person other than a person for whose wrongful act or omission he is by law responsible,

and nothing in this subsection, subsection 33(10) or subsection 33(10.1) limits or restricts any right of recourse that any person who is liable pursuant to subsection 33(10) or 33(10.1) may have against any other person.

## STATUTE OF LIMITATION

**Section 64:** Any proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within two years after the time when the subject-matter of the proceedings arose.

## RIGHT TO APPEAL

**Section 68:** Persons aggrieved by any conviction for any offence under this Act may appeal by petition to the Minister, who may remit penalties and restore forfeitures under this Act; but when a conviction takes place or an order is made by a justice of the peace or fishery officer for the payment of money or dismissing an information or complaint under this Act, nothing in this section prevents any person who thinks himself



aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, from the right of appeal that he has under the provisions of the Criminal Code relating to summary convictions.

## APPLICABILITY TO THE CROWN

**Section 71:** This Act is binding on Her Majesty in right of Canada or a province and any agent thereof.

The above are extracts only. If required, the exact legal wording contained in the *Fisheries Act* is available from fisheries offices listed below.

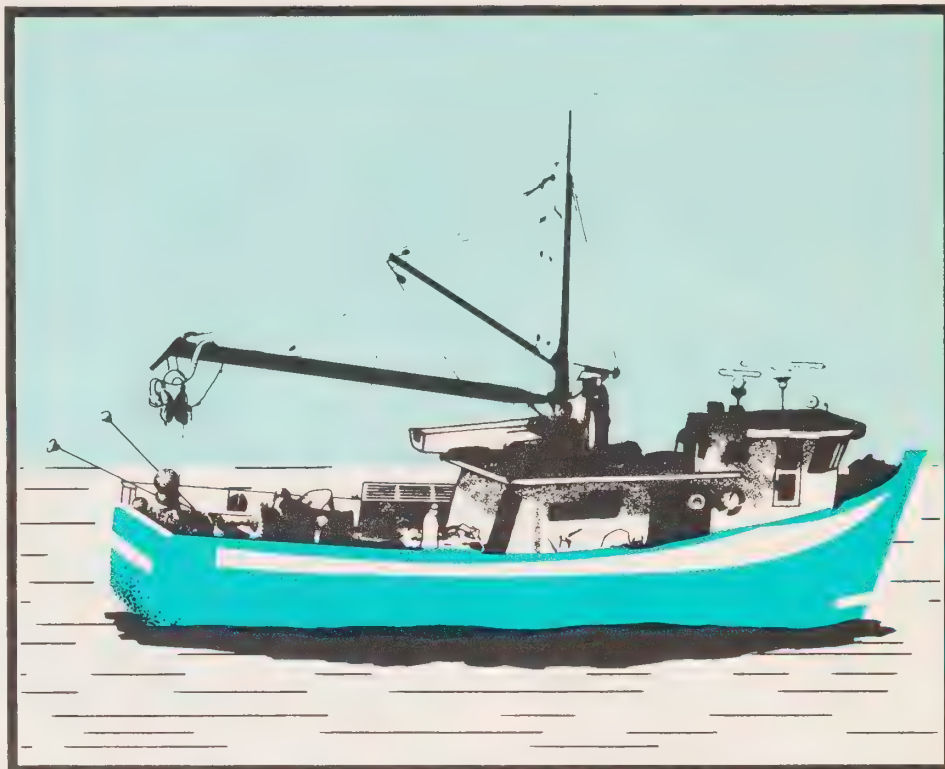
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L7N 3J1  
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Territories)  
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Winnipeg, Manitoba,  
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Telephone: (204) 949-5117

## PROVINCIAL FISHERIES CONTACTS:

In Alberta, Saskatchewan, Manitoba and Ontario, where the federal Fisheries Act is administered by the provincial government, contact the appropriate provincial fisheries management agency.

In British Columbia, in areas which support purely freshwater fish species, contact the provincial Department of Environment.

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